

REMARKS

By this Office Action, the Examiner has required restriction to one of the following inventions under 35 U.S.C. §121:

- Group I. Claims 1-11, drawn to methods of diagnosis by protein measurement, classified in class 435, subclass 7.1.
- Group II. Claim 12, drawn to a protein, classified in class 530, subclass 350.
- Group III. Claims 13-15, drawn to proteins, classified in class 530, subclass 350.
- Group IV. Claims 16-18, drawn to antibodies and pharmaceutical compositions, classified in class 530, subclass 387.1.
- Group V. Claim 19, drawn to methods of treatment using antibodies, classified in class 530, subclass 387.1.
- Group VI. Claims 20-22, drawn to methods of treatment using nucleic acids, classified in class 514, subclass 44.
- Group VII. Claim 23, drawn to methods for identifying protein binding agents, classified in class 435, subclass 7.1.
- Group VIII. Claims 24-28, drawn to methods for identifying agents that modulate expression or activity of polypeptides, classified in class 435, subclasses 4, 6, and 7.1.
- Group IX. Claims 29-34, drawn to nucleic acids, vectors, host cells, nucleic acid hybridization assays, pharmaceutical compositions, and kits, classified in class 536, subclasses 23.5 and 23.1, and class 435, subclasses 6, 320.1, 325, and 252.3.

Responsive to the Requirement for restriction, Applicants elect to prosecute the invention of Group I, with traverse, Claims 1-11, drawn to methods of diagnosis by protein measurement, classified in class 435, subclass 7.1.

Applicants respectfully request reconsideration of the Requirement for Restriction, or in the alternative, modification of the Restriction Requirement to allow prosecution of more than

one group of Claims designated by the Examiner in the present Application, for the reasons provided as follows.

Under 35 U.S.C. §121 "two or more independent and distinct inventions ... in one Application may ... be restricted to one of the inventions." Inventions are "'independent'" if "there is no disclosed relationship between the two or more subjects disclosed" (MPEP 802.01). The term "'distinct'" means that "two or more subjects as disclosed are related ... but are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE OVER EACH OTHER" (MPEP 802.01) (emphasis in original). However, even with patentably distinct inventions, restriction is not required unless one of the following reasons appear (MPEP 808.02):

1. Separate classification
2. Separate status in the art; or
3. Different field of search.

Further, under Patent Office Examining Procedures, "[if the Search and Examination of an entire Application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions" (MPEP 803, Rev. 8, May 1988) (emphasis added).

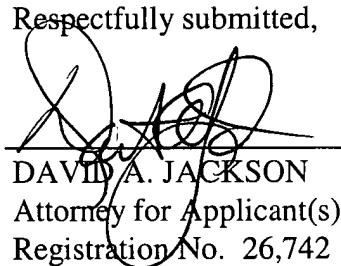
Applicants respectfully submit that the groups designated by the Examiner fail to define compositions and methods, with properties so distinct as to warrant separate Examination and Search. Claim 12 of Group II, drawn to a protein (classified in class 530, subclass 350), is fundamentally related to Claims 1-11 of Group I. The search for the protein separately classified by the Examiner as the invention of Group II would require an additional search of the identical classes wherein the Claims 1-11 of Group I, drawn to methods of diagnosis by protein measurement (classified in class 435, subclass 7.1), are classified, thus resulting in a duplicate search for the same material. Thus, Applicants submit that the Search and Examination of the entire Application, or, at least, of Group II with Group I can be made without serious burden, and therefore the Examiner should examine all of the claims of the Application on the merits.

The Examiner's assertions to the contrary notwithstanding, Applicants respectfully submit that conjoint examination and inclusion of all of the Claims of the present Application would not present an undue burden on the Examiner, and accordingly, withdrawal of the Requirement for Restriction, or, at the least, modification to include the Claims drawn to Group II and Group I is in order.

The Examiner has also indicated that Applicants are required to select one individual polypeptide sequence for examination, should Applicants elect a group that claims or mentions more than one polypeptide sequence. Accordingly, Applicants select BF-14/BPI-14 (Ficolin 3) for continued consideration.

No fees are believed to be necessitated by the foregoing Response. However, should this be erroneous, authorization is hereby given to charge Deposit Account No. 11-1153 for any underpayment, or credit any overages.

In view of the above, withdrawal of the Requirement for the Restriction is requested, and an early action on the merits of the Claims is courteously solicited.

Respectfully submitted,  
  
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